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SENATE JUDICIARY

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Liability concerns may harm public health emergency response

AMA disaster journal study finds medical emergency responders need greater liability protection

For immediate release

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CHICAGO – Public health emergency relief efforts can be hindered because the U.S. lacks clear liability protection laws for all medical emergency responders. Concerns about liability exposure and a lack of guidance on the scope of liability that medical emergency responders could face may make doctors, nurses, and other health care professionals wary of responding to emergencies. These are the findings of a study published today in the American Medical Association's (AMA) *Disaster Medicine and Public Health Preparedness* journal.

The study finds that the U.S. liability law is a patchwork with many gaps and inconsistencies that do not always protect health care providers during emergencies. Hospitals or clinics that donate their time, space, supplies, and resources to emergency response efforts and individual responders who continue to receive a salary from their employer are at the greatest risk. The absence of liability protection is of concern because these health care professionals are likely to be on the front lines as hundreds or thousands of patients rush to emergency rooms, clinics and physicians offices. They could be sued and found liable for a variety of decisions and actions made during a public health emergency.

"Without clear direction on liability exposure and protection, medical responders may be hesitant to participate in essential response activities," said study lead author Sharona Hoffman, J.D., senior associate dean and co-director for the Law-Medicine Center at Case Western Reserve University School of Law.

"Clarification of liability and immunity standards for health care professionals could greatly contribute to the effectiveness of public health emergency response."

Although Congress and all 50 states have limited laws that provide some level of liability protection for volunteers responding to a public health emergency, more legislative clarification is needed. A comprehensive immunity provision that addresses liability for all health care providers is one potential approach. One possible model would be to establish that as long as certain conditions are met, no medical responder could be liable for injuries or harm caused by good faith actions used in a public health emergency. Responders must act under the direction of governmental authorities or nonprofit organizations, and they cannot be engaged in willful misconduct, gross negligence or criminal activity.

"In crafting appropriate liability and immunity provisions for public health emergencies, policymakers must balance individual justice and general public welfare," said Ms. Hoffman. "The law should encourage involvement in response activities without excusing misconduct."

The study has been released early on the AMA disaster journal Web site at <http://www.dmphp.org/pap.dtl> and will be published in the journal's March 2009 issue.

Editor's Note: To obtain complete online access to the journal, contact AMA Media Relations at (312) 464-4813 and provide appropriate press credentials. The AMA's *Disaster Medicine and Public Health Preparedness* journal maintains editorial independence and the statements and opinions in the journal, including the articles referenced above, are not those of the AMA or Lippincott Williams & Wilkins. This article will be included in the next issue of the journal to be published in March 2009.

About AMA's *Disaster Medicine and Public Health Preparedness* Journal

The AMA *Disaster Medicine and Public Health Preparedness* journal was created to promote public health preparedness and the science of disaster medicine. It is the first comprehensive, peer-reviewed publication emphasizing public health preparedness and disaster response. The journal is published for the AMA by leading health care publisher Lippincott Williams & Wilkins. An online version can be found on the web at www.dmphp.org and also is available on the Journals@Ovid platform.

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